



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 21 2007

REPLY TO THE ATTENTION OF

(AE-17J)

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Robert Heslop
Sturgis Iron and Metal Company, Inc.
South Bend Scrap and Processing Division
1305 Prairie Avenue
South Bend, Indiana 46613

Dear Mr. Heslop:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Sturgis Iron and Metal Company, Inc. (Sturgis) CAA Docket No. CAA-05-2007-0030. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 21 2007.

Pursuant to paragraph 26 of the CAFO, Sturgis must pay the \$29,059.80 civil penalty within 30 days of the date the CAFO was filed, SEP 21 2007. The check must display the case docket number, CAA-05-2007-0030, and the billing document number, 0150703A032.

Please direct any questions regarding this case to Kathleen Schnieders, Associate Regional Counsel, (312) 353-8912.

Sincerely yours,

Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

Cc: Craig Henry
Office of Enforcement
Indiana Department of Environmental Management

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. CAA-05-2007-0030
)	Proceeding to Assess a Civil
Sturgis Iron & Metal Co, Inc.)	Penalty under Section 113(d) of the
South Bend, Indiana)	Clean Air Act, 42 U.S.C. § 7413(d)
)	
)	
Respondent.)	
)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(c) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Sturgis Iron & Metal Co, Inc. (Sturgis), a corporation doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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6. The parties consent to entry of this CAFO and the assessment of the specified civil penalty, and agree to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Sturgis admits the jurisdictional allegations in this CAFO and neither admits nor denies the other factual or legal allegations in this CAFO.

8. Sturgis waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112 of the Act, the Administrator promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production, found at 40 C.F.R. Part 63, Subpart RRR §§ 63.1500 through 1520 (hereinafter “RRR”).

10. RRR, at 40 C.F.R. § 63.1500, applies to the owner or operator of each secondary aluminum production facility.

11. The definition of a secondary aluminum production facility, found at 40 C.F.R. § 63.1503 includes any establishment using clean charge, post-consumer aluminum scrap, aluminum scrap [or other listed material], as the raw material and performing one or more of several listed processes, including furnace operations.

12. A sweat furnace is defined at 40 C.F.R. § 63.1503 as a furnace that is used exclusively to reclaim aluminum from scrap that contains substantial quantities of iron by using heat to separate the low-melting-point aluminum from the scrap while the higher-melting-point iron remains in solid form.

13. RRR required Sturgis to comply with several reporting and notification requirements pertaining to its sweat furnace, including submitting notification of compliance status found at 40 C.F.R. § 63.1515(b), developing and implementing a startup, shutdown, and malfunction plan found at 40 C.F.R. § 63.1516(a), and complying with the operation and maintenance plan requirements found at 40 C.F.R. § 63.1510(a).

14. Failure to comply with the requirements of RRR constitutes a violation of Section 113 (a)(1) of the Act, 42 U.S.C. § 7413(a)(1).

15. The Administrator may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

Factual Allegations

16. At all times relevant to this CAFO, Sturgis owned and operated a sweat furnace at its South Bend Scrap and Processing Division (facility), located at 3113 South Gertrude, South Bend, Indiana.

17. The facility was a secondary aluminum production facility, as that term is defined at 40 C.F.R. § 63.1503.

18. On December 7, 2004, the Indiana Department of Environmental Management (IDEM) inspected the facility in order to determine compliance with certain provisions of the Act.

19. IDEM notified Sturgis by letter on January 7, 2005, that it was operating a secondary aluminum furnace in violation of the Act.

20. Sturgis states that they ceased operation of the secondary aluminum furnace upon receipt of IDEM's January 7, 2005, letter and has not resumed operation.

21. At the time of IDEM's inspection, Sturgis had not submitted timely notice of compliance status, as required by 40 C.F.R. §63.1515(b). Sturgis also had not developed and implemented a startup, shutdown, and malfunction plan as required by 40 C.F.R. § 63.1516(a). Finally, Sturgis had not complied with the operation and maintenance plan requirements found at 40 C.F.R. § 63.1510(a).

22. On August 3, 2006, U.S. EPA issued a Notice of Violation (NOV) to Sturgis citing failure to comply with the requirements of RRR, particularly the reporting and notification provisions.

23. On October 2, 2006, U.S. EPA and Sturgis met to discuss the violations cited in the NOV.

24. As a result of the NOV and the meeting, Sturgis dismantled its secondary aluminum furnace and removed it from the facility. The facility no longer owns or operates a sweat furnace.

Violations

25. Sturgis' failure to comply with the applicable provisions of RRR, including but not limited to failure to submit notification of compliance status per 40 C.F.R. §63.1515(b), develop a startup, shutdown, and malfunction plan per 40 C.F.R. § 63.1516(a), and failure to comply with

the operation and maintenance plan requirements per 40 C.F.R. § 63.1510(a), constitute violations of Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1).

Terms of Settlement

Civil Penalty

26. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), including the facts of this case, the nature of the violations, the cooperation demonstrated by Sturgis, and other relevant factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$29,059.80.

27. Sturgis must pay the \$29,059.80 civil penalty either by cashier's or certified check payable to the "Treasurer, United States of America," or ACH debit or credit card, within 30 days after the effective date of this CAFO.

28. Sturgis must send the check to:

US checks sent by regular US Postal Service mail:

U.S. Environmental Protection Agency
Box 371099M
Pittsburgh, PA 15251

US checks sent by non-US Postal Service express mail:

Mellon Client Service Center
ATTN: Shift Supervisor, Room 0690
Lockbox 371099M
500 Ross Street
Pittsburgh, PA 15262-0001

For payments online using ACH debit or credit card, please visit www.pay.gov. Using the **Search Public Forms** option on the tool bar (left side of page), enter **SFO 1.1** in the search field. Open the form and complete the information requested.

29. A transmittal letter, stating Sturgis' name, complete address, the case docket number, and the billing document number must accompany the payment. Sturgis must write the case

docket number and the billing document number on the face of the check. Sturgis must send copies of the check and transmittal letter to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Kathleen Schnieders, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

30. This civil penalty is not deductible for federal tax purposes. If Sturgis does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Sturgis will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Sturgis will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Final Statement

31. This CAFO resolves Sturgis' liability for federal civil penalties for the violations alleged in this CAFO.

32. The effect of the settlement, as defined in paragraph 31, is conditioned upon Sturgis' compliance with paragraphs 27 through 29 of this CAFO.

33. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief for any violation of law not addressed in this CAFO or any criminal sanctions for any violation of law.

34. This CAFO does not affect Sturgis' responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 31 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

35. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Sturgis' "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

36. The terms of this CAFO bind Sturgis, and its successors, and assigns.


37. Each person signing this CAFO certifies that he or she has the authority to sign this CAFO for the party whom he or she represents and to bind that party to its terms.

38. Each party agrees to bear its own costs and attorneys' fees in this action.

39. This CAFO constitutes the entire agreement between the parties

U.S. Environmental Protection Agency, Complainant

9/21/07
Date


Stephen Rothblatt, Director
Air and Radiation Division
U S. Environmental Protection
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER

Sturgis Iron & Metal Co, Inc

Docket No. CAA-05-2007-0030

Sturgis Iron & Metal Co, Inc, Respondent

Date

9/13/07

Ralph Levin

Sturgis Iron & Metal Co, Inc.

CONSENT AGREEMENT AND FINAL ORDER

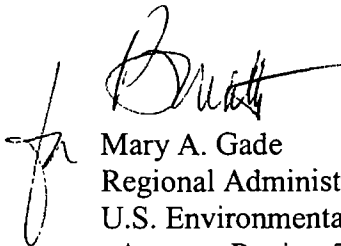
Sturgis Iron & Metal Co, Inc.

Docket No. CAA-05-2007-0030

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9-21-07


Mary A. Gade
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

In the Matter of Sturgis Iron and Metal Company, Inc.
Docket No:

CAA-05-2007-0030

CERTIFICATE OF MAILING


I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2007-0030 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Sturgis Iron and Metal Company, Inc. and Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Robert Heslop
Sturgis Iron and Metal Company, Inc.
South Bend Scrap and Processing Division
1305 Prairie Avenue
South Bend, Indiana 46613

I also certify that a copy of the CAFO was sent by first-class mail to:

Craig Henry
Office of Enforcement
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

on the 21st day of September 2007.


Betty Williams, Secretary
AECAS (IL/IN)

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